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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	WW-13-1337-JuKuPa
)		
JESSICA ARLENE NELSON,)	Bk. No.	11-12572-MLB
)		
Debtor.)		
<hr/>			
DARRYL PARKER,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
JESSICA ARLENE NELSON,)		
)		
Appellee.)		
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Argued and Submitted on June 26, 2014
at Pasadena, California

Filed - July 11, 2014

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Marc L. Barreca, Bankruptcy Judge, Presiding

Appearances: Darryl Parker, Esq., Premier Law Group, PLLC,
on brief pro se; Marc S. Stern, Esq. argued for
appellee Jessica Arlene Nelson.

Before: JURY, KURTZ, and PAPPAS, Bankruptcy Judges.

* This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8013-1.

1 Debtor Jessica Arlene Nelson moved to have her former
2 attorney Darryl Parker found in contempt for violating § 524.¹
3 Her motion was based on Parker's postpetition assertion of
4 attorney's liens against settlement proceeds from two auto
5 accident claims that debtor claimed exempt and his subsequent
6 failure to release the liens. The bankruptcy court entered an
7 order against Parker by default, finding him in contempt for
8 violating the discharge injunction under § 524 and voiding the
9 attorney's liens (Contempt Order). The Contempt Order
10 authorized debtor's attorney to file a separate motion for
11 attorneys' fees as a sanction for the contempt. Parker then
12 moved to set aside the Contempt Order and debtor moved for
13 attorneys' fees. The bankruptcy court entered a judgment and
14 order denying Parker's set-aside motion and awarding debtor
15 attorneys' fees in the amount of \$2,048.45 (Judgment). Parker
16 appeals from the Contempt Order and Judgment.

17 For the reasons explained below, we VACATE the Judgment and
18 REMAND to the bankruptcy court for proceedings consistent with
19 this memorandum.

20 I. FACTS

21 Parker is a civil rights attorney and partner in the
22 Premier Law Group, PLLC (Premier). In July 2010, debtor
23 retained Parker to represent her on a contingency fee basis in
24 connection with two auto accidents that occurred on March 11 and

25
26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure and "Civil Rule" references are to the Federal Rules of
Civil Procedure.

1 12, 2010. When debtor filed her chapter 7 petition on March 9,
2 2011, the matters were pending.

3 Debtor listed her interest in the auto accident claims in
4 Schedule B and listed them as exempt property in Schedule C. In
5 Schedule F, she identified Parker as an unsecured creditor owed
6 \$9,000 for "costs for prior representation."

7 Shortly after debtor's filing, Parker made a demand on the
8 at-fault drivers' insurance companies. It is unclear whether
9 Parker made the demand on behalf of debtor or for himself alone.
10 Debtor subsequently discharged Parker. By letters dated
11 June 15, 2011, Parker informed the insurance companies that he
12 no longer represented debtor and gave notice that his office
13 asserted a lien for \$5,000 against any settlement proceeds.

14 A week later, the chapter 7 trustee filed his no asset
15 report. On July 18, 2011, debtor received her discharge and on
16 July 22, 2011, the case was closed and the auto accident claims
17 were deemed abandoned to debtor. The bankruptcy court mailed
18 Parker, who was on the bankruptcy court's mailing matrix, a copy
19 of the Official Form 18 discharge order.

20 A year and half later, on November 6, 2012, debtor's
21 attorney, Marc Stern, informed Parker by letter that the
22 postpetition attorney's liens asserted against debtor's exempt
23 property, the auto accident settlement proceeds, constituted a
24 violation of §§ 362 and 524 and were void. Attached to the
25 letter was a copy of the discharge order.

26 One month later, having received no response, Stern sent
27 another letter requesting that Parker contact him to discuss the
28 matter. Included with the letter was a copy of the certified

1 mail receipt confirming delivery of the first letter to Darryl
2 Parker, Premier Law Group, 3380 146th Pl SE Ste 430, Bellevue,
3 WA 98007-6480. Parker again did not respond.

4 On February 6, 2013, debtor filed a motion seeking to hold
5 Parker in contempt for violation of § 524. Debtor submitted her
6 declaration in support stating that she had to fire Parker
7 because he "never did anything." She further declared that in
8 August 2012 she agreed to a settlement of her claims with the
9 insurance companies, but could not finalize them due to the
10 asserted attorney's liens.

11 Stern served Parker by mail with the motion for contempt
12 and notice of hearing at the address listed above. Parker again
13 did not respond. On March 8, 2013, the day of the hearing,
14 Parker went to the bankruptcy court, but he was advised that the
15 court had already ruled on the matter. The docket reflects no
16 hearing took place, it having been vacated on March 7, 2013.

17 Prior to the hearing, on March 4, 2013, Stern filed a
18 Declaration of No Objection and submitted a default order. The
19 bankruptcy court questioned whether it could enter the order
20 without reopening the bankruptcy case and whether it could void
21 the attorney's liens when there was an issue of perfection. In
22 a supplemental pleading, debtor maintained that under Wash. Rev.
23 Code (RCW) 60:40:101(1)(c) the attorney's liens were created
24 when Parker gave notice to the insurance companies.

25 Apparently satisfied that it did not need to reopen the
26 bankruptcy case under the holding in Menk v. LaPaglia
27 (In re Menk), 241 B.R. 896, 906 (9th Cir. BAP 1999), and that
28 the attorney's liens were created postpetition and thus void due

1 to the automatic stay, the bankruptcy court entered the Contempt
2 Order on March 26, 2013, finding Parker in contempt and voiding
3 the attorney's liens. The court struck out the portion of the
4 order which awarded \$1,000 in attorneys' fees for the contempt
5 and replaced it with the following language: "Should counsel
6 believe attorneys' fees are appropriate, he may bring a separate
7 motion with appropriate evidentiary support as to the amount of
8 fees incurred." Neither the order nor a separate document
9 contained the court's findings of fact or conclusions of law on
10 the contempt.

11 Stern subsequently filed a motion seeking the approval of
12 his attorneys' fees in the amount of \$2,048.45 incurred for
13 bringing the motion for contempt. This motion was noticed for
14 hearing on May 31, 2013, and Stern again served the motion and
15 notice of hearing on Parker at the address mentioned above.

16 About six weeks after the Contempt Order was entered, on
17 May 6, 2013, Parker filed a motion to set aside the order.
18 Parker argued that the debt for his attorneys' fees in
19 connection with the auto accident claims was not included in
20 debtor's bankruptcy schedules. Parker maintained that the debt
21 listed in Schedule F for \$9,000 and described as "costs for
22 prior litigation" were costs incurred in a malpractice action
23 that Premier litigated on debtor's behalf against attorneys that
24 had represented debtor in a wrongful termination suit.

25 Parker further asserted that he fully prepared both auto
26 accident cases, readied them for settlement and had obtained two
27 firm offers, but debtor rejected the offers, abruptly fired
28 Parker, and then hired another attorney. Parker argued that

1 under Washington law, his office was entitled to assert the
2 liens despite the fact debtor had rejected the settlement
3 offers. Finally, Parker contended that he never received actual
4 notice of the motion for contempt, never appeared in the
5 bankruptcy proceedings, and was denied due process because the
6 Contempt Order failed to identify what order he had violated or
7 conduct by him that violated the unidentified order. In short,
8 Parker maintained that debtor's motion for contempt constituted
9 "fraud" because the entire process was to "divert the proceeds
10 from Ms. Nelson's personal injury settlement away from attorney
11 Parker and into the hands of select lawyers." Relying on
12 28 U.S.C. § 1927, Parker requested sanctions against debtor and
13 Stern in the amount of \$5,000.

14 In a supporting declaration, Parker maintained that he did
15 not receive actual notice of the Contempt Order. Parker
16 explained that his civil rights practice required him to travel
17 extensively and, as a result, he relied on others to sort and
18 open his mail. In that regard, Parker submitted the declaration
19 of Eve Vysotakiy, a law clerk working in his office, who was
20 responsible for his mail. Ms. Vysotakiy declared that it was
21 her responsibility to process Parker's mail because of his
22 constant travel. She further declared that "to date" she had
23 not seen any motion for contempt at any time before or after her
24 leave of absence from February 1, 2013 through March 11, 2013,
25 when she was studying for the bar. Parker later acknowledged
26 that he found the motion and other documents from Marc Stern in
27 a box for delivery of additional documents to closed files.

28 In response, Stern argued that the mail sent to Parker at

1 his office address was never returned. Stern maintained that
2 there was no ground to set aside the order under Rule 9023
3 because it was untimely and the motion did not meet the
4 prerequisites for relief required by Rule 9024.

5 In late May 2013, Parker filed an opposition to debtor's
6 request for attorneys' fees. Parker argued that he never sent
7 debtor a bill and demand for payment nor did he send her a
8 letter requesting payment. Parker asserted that neither debtor
9 nor Stern were entitled to fees because debtor had never proved
10 the elements of contempt. Parker again maintained that debtor's
11 schedules showed only the costs associated with the malpractice
12 suit and not the automobile accident cases. Finally, Parker
13 alleged that Stern's time was spent on activities other than
14 proving contempt.

15 On May 31, 2013, the bankruptcy court heard Parker's
16 set-aside motion and his objection to Stern's request for
17 attorneys' fees. For the first time, Parker argued that he was
18 entitled to be paid for the postpetition work he had done on the
19 auto accident cases either at his hourly rate, which was in the
20 fee agreement, or through his asserted attorney's liens. Parker
21 reiterated that only the fees in connection with the malpractice
22 lawsuit were listed in debtor's Schedule F and, therefore, the
23 fees associated with the auto accident cases, which were mostly
24 incurred postpetition, were not discharged.

25 The bankruptcy court acknowledged that Parker may have been
26 entitled to assert a postpetition lien for postpetition work,
27 but noted that it had no evidence of the work done or a copy of
28 the fee agreement. In addition, the court found that because

1 Parker asserted the liens against an asset based at least
2 partially on a prepetition debt, the liens would be void. As a
3 result, the bankruptcy court concluded that even if it set aside
4 the Contempt Order and held an evidentiary hearing, Parker would
5 have a "pretty tough row to hoe. . . ."

6 The bankruptcy court then considered the various sections
7 of Civil Rule 60(b) (incorporated by Rule 9024) and reasoned
8 that the requirements under subsections (1)-(5) were not met.
9 The court also rejected Parker's contention that he had not been
10 served with the contempt motion and found no miscarriage of
11 justice under the circumstances to warrant relief under Civil
12 Rule 60(b)(6). In the end, the court denied Parker's set-aside
13 motion and concluded that Stern was entitled to his fees, which
14 the court found reasonable.

15 On June 6, 2013, Stern noticed his motion for entry of the
16 judgment and award of attorneys' fees and order denying Parker's
17 set-aside motion. Parker opposed, contending that the order
18 against him personally and against the marital community was
19 improper. Parker argued that there was no notice to the marital
20 community and that debtor's only contract was with Premier.
21 Parker further objected on the grounds that the court made no
22 findings of fact on any issue orally or in writing and made no
23 conclusions of law with respect to the contempt or on Parker's
24 set-aside motion. Finally, Parker contended that the wording of
25 the judgment was inconsistent with the order.

26 The court heard the matter on June 28, 2013, and ruled
27 against Parker. After finding that the Judgment and order
28 accurately reflected its ruling, the bankruptcy court stated:

1 "I'm not sure, Mr. Parker, that you're still getting how the
2 discharge order works or what it means to be in contempt of
3 that." Taking Parker's objection as a request for
4 reconsideration, the court revisited its findings with respect
5 to Stern's fees regarding some of the narrative. After a
6 dialogue on record between the court and Stern regarding these
7 entries, the court allowed the fees. The bankruptcy court
8 entered the Judgment and order consistent with its ruling on
9 July 8, 2013.

10 On July 12, 2013, Parker filed a notice of appeal (NOA) of
11 the Judgment and order entered July 8, 2013. On July 17, 2013,
12 Parker filed an amended NOA designating the March 26, 2013 order
13 for contempt and the July 8, 2013 Judgment and order as the
14 orders being appealed from.

15 **II. JURISDICTION**

16 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
17 §§ 1334 and 157(b)(2)(A) and (K). We have jurisdiction under
18 28 U.S.C. § 158.

19 **III. ISSUES**

20 Did the bankruptcy court abuse its discretion in:
21 (1) finding that Parker violated the discharge injunction and
22 holding him in contempt; and (2) entering the Judgment awarding
23 attorneys' fees as a sanction for Parker's civil contempt?

24 **IV. STANDARDS OF REVIEW**

25 The bankruptcy court's civil contempt order and sanctions
26 are reviewed for abuse of discretion. Rediger Inves. Servs. v.
27 H Granados Commc'ns, Inc. (In re H Granados Commc'ns, Inc.),
28 503 B.R. 726, 731-32 (9th Cir. BAP 2013). In determining

1 whether the court abused its discretion we first determine de
2 novo whether the trial court identified the correct legal rule
3 to apply to the relief requested and then, if the correct legal
4 standard was applied, we determine whether the court's
5 application of that standard was "(1) illogical,
6 (2) implausible, or (3) without support in inferences that may
7 be drawn from the facts in the record." United States v. Loew,
8 593 F.3d 1136, 1139 (9th Cir. 2010).

9 V. DISCUSSION

10 A. The Scope Of This Appeal Includes The Contempt Order.

11 A final judgment, order or decree is one which ends the
12 litigation on the merits and leaves nothing for the trial court
13 to do but execute on the decision. Catlin v. United States,
14 324 U.S. 229 (1945). The March 26, 2012 Contempt Order does not
15 meet this test of finality. The order established only Parker's
16 liability and gave Stern the opportunity to file a separate
17 motion for his attorneys' fees incurred in bringing the contempt
18 motion. Accordingly, the bankruptcy court still had to decide
19 the amount, if any, of the attorneys' fees.

20 The Contempt Order became final and appealable once the
21 bankruptcy court awarded the attorneys' fees as sanctions. See
22 Weyerhaeuser Co. v. Int'l Longshoremen's & Warehousemen's Union,
23 Local 21, 733 F.2d 645, 645 (9th Cir. 1984); see also Donovan v.
24 Mazzola, 761 F.2d 1411, 1417 (9th Cir. 1985). Upon entry of the
25 Judgment, the Contempt Order merged into the Judgment.
26 Therefore, the Contempt Order is properly before us in this
27 appeal. See Am. Ironworks & Erectors, Inc. v. N. Am. Const.
28 Corp., 248 F.3d 892, 897-98 (9th Cir. 2001).

1 **B. Standards For Contempt.**

2 Section 524 provides that the discharge "operates as an
3 injunction against the commencement or continuation of an action
4 . . . to collect, recover or offset any [discharged] debt as a
5 personal liability of the debtor." See § 524(a)(2). "A party
6 who knowingly violates the discharge injunction can be held in
7 contempt under [§] 105(a) of the bankruptcy code." ZiLOG, Inc.
8 v. Corning (In re ZiLOG, Inc.), 450 F.3d 996, 1007 (9th Cir.
9 2006).

10 The party seeking contempt sanctions has the burden to
11 prove, by clear and convincing evidence, that the creditor
12 (1) knew the discharge injunction was applicable and
13 (2) intended the actions which violated the injunction. Id.
14 The ZiLOG court explained the knowledge requirement, explicitly
15 recognizing that mere receipt of the discharge order may not
16 constitute the requisite knowledge:

17 To be held in contempt, the [alleged contemnors] must
18 not only have been aware of the discharge injunction,
19 but must also have been aware that the injunction
20 applied to their claims. To the extent that the
21 deficient notices led the [alleged contemnors] to
believe, even unreasonably, that the discharge
injunction did not apply to their claims because they
were not affected by the bankruptcy, this would
preclude a finding of willfulness.

22 Id. at 1009, n.14. The court further emphasized that knowledge
23 of the injunction is a question of fact that normally can be
24 resolved only after an evidentiary hearing. Id. at 1007.
25 "Knowledge of the injunction, which is a prerequisite to its
26 willful violation, cannot be imputed; it must be found. . . ."
27 Id. at 1008.

1 **C. The Bankruptcy Court Erred In Entering The Contempt Order.**

2 A motion for contempt is a contested matter and,
3 consequently, subject to Rule 9014. In turn, in a contested
4 matter, the bankruptcy court must render findings of fact and
5 conclusions of law as required by Civil Rule 52(a) (incorporated
6 by Rules 7052 and 9014(c)).

7 The bankruptcy court made no findings – legal or factual –
8 in connection with the Contempt Order. It is unclear what legal
9 rule the bankruptcy court applied when deciding to hold Parker
10 in contempt. The court never mentioned ZiLOG nor did it point
11 to any evidence presented by debtor which might have met the
12 factors for contempt in this circuit. Because there are no
13 findings, we are unable to review whether the bankruptcy court
14 abused its discretion in holding Parker in contempt. Given the
15 seriousness of a finding of contempt, it is all the more
16 important for the bankruptcy court to articulate the legal rule
17 being applied and the explicit findings of fact that support the
18 legal rule. On remand, the bankruptcy court should apply the
19 factors in ZiLOG and provide sufficient factual findings so that
20 its decision can be evaluated on appeal. Due to our conclusion,
21 it is unnecessary to address the parties' other arguments on
22 appeal.

23 **VI. CONCLUSION**

24 For the reasons stated, we VACATE the Judgment and REMAND
25 for proceedings consistent with our decision.
26
27
28